# REPORT TO THE GENERAL ASSEMBLY PURSUANT TO ACT 204 OF 2003 ON THE FEASIBILITY OF IMPLEMENTING A LARGE USER ACCESS PROGRAM FOR ELECTRIC SERVICE CHOICE

*Submitted by the Arkansas Public Service Commission*
*September 30, 2004*

## EXECUTIVE SUMMARY

This Report is submitted pursuant to Section 17 of Act 204 of 2003, *The Electric Utility Regulatory Reform Act of 2003* (“Act 204") by the Arkansas Public Service Commission (“Commission”) to the General Assembly of the State of Arkansas (“General Assembly”). Act 204 requires that the Commission conduct a collaborative meeting to study the feasibility of implementing a program in which large users may have access to choice for electric service (“Access” or “LUAP” or “Program”) and that the Commission report its findings in this regard to the General Assembly by September 30, 2004.

On April 23, 2004, the Commission opened Docket No. 04-061-U to conduct the collaborative and asked interested parties to respond to certain questions in this regard about: changes in circumstance since Act 204's passage; infrastructure needed to effect access; implementation and stranded costs; possible cost shifting; and large user participation. The Commission established the date for the collaborative meeting to begin on July 22, 2004. Upon receipt of the initial and reply comments, the Commission issued an order asking the parties to be prepared to answer several other questions during the meeting. All of the questions were asked to aid the Commission in collecting appropriate data to develop the report. (See Attachment A)

Upon consideration of the information received and its own experience regarding electric competition issues, the Commission advises that it would not be feasible to implement a LUAP at the present time without shifting costs to other classes of customers. Correspondingly, the Commission recommends no changes be made to the statutes which would effect access to competitive power supply by large users at this time. The Commission bases its recommendation on the following reasons:

- ♦ There continues to be no functioning Regional Transmission Organization ("RTO") or organized wholesale markets in this region;
- ♦ There is very little likelihood that the wholesale generation market could serve the electricity consumption needs of any group of Arkansas retail customers more cost-competitively than existing retail electric rates, since the prices for retail electricity in Arkansas are primarily based on low-cost nuclear and coal assets, whereas the wholesale prices for electricity are primarily based on the much higher current prices of natural gas;
- ♦ Arkansas utilities have an obligation to maintain sufficient generation capacity to provide reliable service to all customers, meaning that the loss of any customer group's cost contribution to the fixed costs of that installed capacity would result in cost-shifting to the remaining utility customers;
- ♦ The costs of implementing and administering a Large User Access Program could be significant, thereby either making any market purchases less economic to Large Users or increasing costs to others;
- ♦ Absent assurances of lower wholesale market costs for Large Users' electricity needs, which are not likely to occur any time in the near future, Large Users are hesitant to commit to participation in a LUAP;
- ♦ There are other programs which can be pursued by the utilities, under current regulatory authority, which could address some of the concerns of Large Users;
- ♦ Given the current low cost of retail electricity service in Arkansas, and the many years of

useful life left in our low-cost generation assets, we can afford to take the time to monitor the developments and potential success of any Large User Access Programs in other states, in order to determine the best program design for potential future implementation in this state; and

- The Commission has an open docket to develop new rules for electric utilities' Comprehensive Resource Planning, within which the feasibility of Large User Access or other programs may be considered as a method to reduce incremental utility construction or purchase obligations. This is likely the most feasible way of integrating Large User programs within the context of our current regulatory framework without causing harm to other customer classes.

As appropriate, the Commission will continue to participate in the development of cost-effective transmission improvements and wholesale electricity markets, monitor utility generation costs, and engage in ongoing discussions with interested parties regarding potential future Large User Programs.

## BACKGROUND

Act 1556 of 1999, *The Electric Consumer Choice Act Of 1999* ("Act 1556") directed the Arkansas Public Service Commission (the "Commission") to initiate competition in the retail electric market in Arkansas. The intent of Act 1556 was to establish a new regulatory regime in Arkansas whereby all retail electric utility customers would be free to purchase electric power from any competitive electric power generation company. Prior to the initiation of retail electric competition, the Arkansas General Assembly enacted Act 204 of 2003, *The Electric Utility Regulatory Reform Act of 2003* ("Act 204"). Act 204 acknowledged that the Commission had determined that Arkansas' electric ratepayers would be unlikely to benefit from, and could be harmed by, retail electric competition for the foreseeable future, and that implementation of retail electric competition in Arkansas should either be delayed for a significant period of years or be repealed.[1] Act 204 found that the environment in the electric utility industry had changed, and that it was in the public interest for the Commission to continue regulating retail electric rates for the foreseeable future. Accordingly, Act 204 repealed the provisions of Act 1556 which had provided for the initiation of retail electric competition for all classes of customers. However, Section 17 of Act 204 also required the Commission to:

> ... conduct a collaborative meeting to study the feasibility of a large user access program for electric service choice, including a commitment to insure there is no cost shifting to any other class of customers, and report to the General Assembly on or before September 30,2004.

[1]See, Commission Reports to the General Assembly dated November 28,2000, and December 20, 2001, filed in Docket No. 00-190-U ("Commission Reports").

## PROCEDURAL HISTORY

To address this requirement, the Commission initiated a generic proceeding, Docket No. 04-061-U, on April 23, 2004, for the purpose of receiving comments[2] focused on whether a successful, statewide Large User Access Program ("LUAP or Program") could be implemented without causing cost-shifting to any other classes of customers. The Commission, therefore, directed the parties to address: (1) any changes in circumstance since Act 204's passage; (2) any infrastructure needed for such a Program; (3) potential Program costs, stranded costs, and cost shifting which could occur, and; (4) the likelihood that Large Users would actively participate in the Program. The Commission designated all jurisdictional electric utilities,[3] the Arkansas Attorney General ("AG"), the Arkansas Electric Energy Consumers, Inc. ("AEEC"), the Commercial Energy Users Group ("CEUG"), and the General Staff of the Arkansas Public Service Commission ("Staff") as official parties to the proceeding and invited all other entities desiring official party status to petition for intervention. Other entities which became parties to the proceeding included: Arkansas Western Gas Company ("AWG"), Calpine Central, L.P.

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[2]Pursuant to its Order No. 1, which initiated the docket, the Commission also ordered all parties to file Initial Comments no later than May 28, 2004, and Reply Comments no later than June 25, 2004 and set a collaborative meeting to begin on July 22, 2004.

[3]The Commission has jurisdiction over 22 electric utilities in Arkansas: Entergy Arkansas, Inc. ("EAI"), Oklahoma Gas and Electric Company ("OG&E"), Southwestern Electric Power Company ("SWEPCO"), The Empire District Electric Company ("Empire"), Arkansas Electric Cooperative Corporation ("AECC"), the electric generation cooperative provider to the majority of electric distribution cooperatives in Arkansas, and the electric distribution cooperatives, which are: Arkansas Valley Electric Cooperative Corporation, Ashley Chicot Electric Cooperative, Inc, C & L Electric Cooperative Corporation, Carroll Electric Cooperative Corporation, Clay County Electric Cooperative Corporation, Craighead Electric Cooperative Corporation, Farmers Electric Cooperative Corporation, First Electric Cooperative Corporation, Mississippi County Electric Cooperative, Inc., North Arkansas Electric Cooperative, Inc, Ouachita Electric Cooperative Corporation, Ozarks Electric Cooperative Corporation, Petit Jean Electric Cooperative Corporation, Rich Mountain Electric Cooperative, Inc., South Central Arkansas Electric Cooperative, Inc., Southwest Arkansas Electric Cooperative Corporation, and Woodruff Electric Cooperative Corporation (collectively," The Coops").

("Calpine"), Constellation New Energy, Inc. and Constellation Power Source, Inc. ("Constellation"), Nucor Steel-Arkansas and Nucor-Yamato Steel Company ("Nucor"), Tractebel Energy Marketing, Inc.("Tractebel"), Union Power Partners, L.P. ("Union"), and Wal-Mart Stores, Inc. ("Wal-Mart"). Pursuant to the procedural schedule, Initial and Reply Comments were filed by most of the parties.

After reviewing both the parties' Initial and Reply Comments, the Commission issued Order No. 8 on July 8, 2004, directing the parties to address additional questions during the collaborative discussions scheduled for July 22 and 23,2004. Those questions are included herein as Attachment A.

On July 22, 2004, the Commission held and concluded its scheduled collaborative meeting. Parties attending the collaborative were: AEEC, Wal-Mart, Nucor, Calpine, Tractebel, Constellation, EAI, AECC, The Coops, SWEPCO, OG&E, Empire, AWG, the AG, and Staff.[4] At the close of the collaborative on July 22, 2004, the Commission invited those parties wishing to file follow-up comments to do so by August 20, 2004,[5] and, in addition, asked that the relevant parties file certain other pertinent information in the docket. Specifically, the Commission asked that the electric utilities provide it with the number of Large Users which would qualify for Retail Access at each of the different eligibility levels discussed both in comments and at the collaborative.[6]

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[4](Found at Transcript of Hearing, pages 2-3)

[5](Found at Transcript of Hearing, page 222)

Final comments and recommendations were filed on August 20, 2004, by Staff, the AG, EAI, OG&E, SWEPCO, AEEC, Tractebel, and Wal Mart.

## POSITIONS AND RECOMMENDATIONS OF THE PARTIES

The collaborative process, including consideration of the parties' pre-filed comments, provided an opportunity to gain significant information about whether a LUAP that caused no cost-shifting to other customer classes could be implemented at this time. Generally, the parties have aligned themselves into three groups regarding their positions and recommendations to the Commission. Those parties which recommended against implementation of a LUAP at this time were Staff, the AG, AECC, the Coops, EAI, Empire, OG&E, and SWEPCO. AEEC, representing large industrial electric customers, recommended that a LUAP might be pursued, but not for immediate implementation, and that any implementation should coincide with a utility's planning for new generation. Constellation, Calpine, Tracetebel, and Wal Mart recommended that a LUAP be immediately implemented.

Those parties that recommended against initiating a Program generally contended that, since passage of Act 204, there has been little or no change in circumstances which would indicate that Large User Access is currently appropriate. Staff also argued that, prior to Access for <u>retail</u> service, it is imperative that a workably competitive <u>wholesale</u> market be in place in this region. Moreover, formation of a Regional Transmission Organization or RTO,[7] which

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[6](Found at Transcript of Hearing, pages 223)

[7]An RTO would provide independent transmission access throughout a multi-state region for the delivery of power at wholesale.

provides a necessary structural framework for a competitive wholesale market, is only now on the verge of being approved[8] in this region, with the development and implementation of wholesale market mechanisms taking place subsequent to that.[9] The parties opposed to a LUAP additionally pointed to the relatively low-cost power now[10] being provided by utilities in Arkansas[11] , and cautioned that additional costs related to the implementation of any LUAP could be prohibitively high,[12] depending on the number of customers eligible. These cost implications, coupled with the statutory requirement that there be no cost shifts to other customers, would make program implementation uneconomic at this time. Staff, in its comments, referenced the economic analysis performed on its behalf in Commission Docket No. 00-190-U, which indicated that, for the foreseeable future, no economic benefits would likely accrue to Large Users through the implementation of a LUAP.[13] Therefore, these parties concluded, absent an appropriate economic incentive to do so, few, if any, customers would

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[8]Staff also points out that the Commission is now actively participating in this region's proceeding at the Federal Energy Regulatory Commission ("FERC") in which the Southwest Power Pool ("SPP") has sought RTO recognition on behalf of its members, including AECC, Empire, OG&E, and Swepco.

[9]*Staff Supplemental Post Collaborative Comments*, Pages 1-2.

[10]Additionally, such lower-cost power is expected to be available for some time into the foreseeable future.

[11]The AG provides a chart (Appendix A of its *Post-Collaborative Comments* ), using data from the Energy Information Administration ("EIA"), comparing power costs for Arkansas and other states indicating that, as he says on pages 1 and 2 of those comments, only four states in the nation had lower cost power for its industrial customers than did Arkansas in the first four months of 2004.

[12]AECC, the Coops and Empire indicate that significant costs for infrastructure and administration would be incurred, but were not able to provide an estimate; EAI estimates infrastructure and other costs of between $12 to $16 million, and $1 million annually in ongoing costs; Swepco estimates between $400,00-$700,000 in one-time costs, with between $300,000 and $500,000 annually thereafter.

[13]Page 1 of Staff *Supplemental Post Collaborative Comments.*

become sustained LUAP customers. This being the case, while Large User Access could "technically"[14] be implemented at this time, it would not be "feasible" to make it a successful program that both benefitted Large Users and caused no harm to remaining ratepayers, as required by the statute.

Those parties which support immediate implementation of a LUAP asserted that there have been significant changes in circumstances since the passage of Act 204, making implementation of Large User Access more feasible now. Further, they opined that it is not necessary to wait for RTO or wholesale market formation in this region prior to instituting access and that implementation of the Program should aid that formation. Those in favor of access also contended that the Program would provide significant economic benefits, both for Large Users and for other ratepayers, and should be successful. Tractebel had commissioned a study which purported to show that Large User savings could be as much as $100[15] million per year, with no "lost" revenues[16] and resulting cost shifts, minimal implementation costs, and little or no stranded costs incurred.[17] AECC, Staff, and the AG reviewed this study, however, and concluded that the results could not be relied upon. In addition, even Constellation's filed comments noted that a Large User program could produce stranded costs, while stressing that

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[14]The parties agree that a Program, assuming statutory authority to do so, could technically be fashioned by the Commission.

[15]Tractebel Reply Comments and *Final Comments of Tractebel Energy Marketing, Inc.*, page 2.

[16]Other customers' generation costs will be reduced. Maintaining rates at current levels should provide funds to cover implementation and any stranded costs, and, thus, avoid "cost shifts".

[17]Tractebel Initial Comments.

such short-term costs should eventually be outweighed by the long-term benefits of developing a more competitive market.

In concert with Tractebel, all of the pro-LUAP parties contended that implementation costs would not be prohibitive. Rather, they argued that, in view of both the groundwork laid by this Commission in addressing previous mandates of Act 1556 and the experience available from other states, implementation of access need not be either complicated or costly. In addition, these parties contended that alternative supply resources are quite competitive with current utility generation and could provide significant savings for Large Users. In support of that contention, Wal-Mart and Constellation asserted that the utilities' own avoided cost studies indicate that new merchant generation resources can be used to economically replace resources of the utilities[18], and Tractebel argued that, in spite of recent gas price spikes, gas-fired merchant generation can be competitive. Tractebel further argued that comparisons of monopoly utility prices between Arkansas and other states are not germane when considering competitive alternatives and a competitive market. More importantly, Tractebel argued that, irrespective of any short-term market prices, introduction of competition will create significant long-term benefits for utility customers.[19] Finally, these parties asserted that a LUAP would be attractive to Large Users and that the savings expected would be a significant incentive for them to participate, which should make any Program successful. Tractebel conducted an informal poll of potential Access

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[18]*Comments of Wal Mart Stores, Inc. and Constellation New Energy in Response to the Collaborative Meeting of July 22, 2004*, page 3.

[19]*Final Comments of Tractebel Energy Marketing, Inc*., pages 8-12.

customers, indicating a high level of interest in LUAP.[20] Constellation noted that it expected its customers to participate and that, in Maine, Illinois, and Texas where Access is allowed, participation rates were as high as 60%.[21] Wal Mart also advised that it expected to participate in any such Program.[22]

More importantly, AEEC, the industrial customer group, recommended that the Commission not implement any program immediately in light of AEEC's concerns regarding current market pricing, and the inability to know whether or not its members could achieve lower market prices than their current sales rates. Rather, AEEC recommended that a LUAP be implemented simultaneously with Commission consideration of new generation construction or long-term power purchases by the electric utilities. AEEC proposed that the Commission include LUAP as a tool in a utility's resource planning process, which would provide an alternative to constructing a new power plant or entering into a new power purchase agreement. In the interim, the Commission could continue to work toward developing an appropriate LUAP with services and related costs clearly delineated. AEEC concluded that this would then provide Large Users, at the appropriate time, the information they would need to decide whether the LUAP would be economic for them and, thus, whether they should participate.[23]

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[20]Tractebel Initial Comments

[21]Constellation Initial Comments

[22]Wal Mart Initial Comments

[23]*Final Comments of Arkansas Electric Energy Consumers, Inc., ("AEEC") in Response to Comments made*

## DISCUSSION

### General

The Commission is charged with providing the General Assembly its recommendation on whether it would be feasible to implement a LUAP that does not shift costs to other classes of ratepayers. The Commission has considered both the filed comments and collaborative discussions among those parties participating in the process. The Commission also has taken into consideration what it has learned as an active participant in the formation, at the Federal level, of the Southwest Power Pool's proposed RTO. The Commission has been participating in the SPP RTO process as a member of the SPP Regional State Committee ("RSC")[24]. Additionally, the Commission continues to monitor competitive wholesale and retail activity at the Federal and individual state levels, respectively.

As more fully discussed in the following sections of this Report, the Commission recommends that the General Assembly not pursue any legislative changes to provide for a LUAP at this time. Given what it has learned as a result of the collaborative process, the comparison of current retail rates versus wholesale market rates, the probability that fixed costs would be shifted to other customers, the lack of an established RTO and fully-functioning wholesale markets in this region, and the lack of sufficient customer commitment to warrant the significant development and implementation costs of a LUAP, the Commission finds that such a recommendation would be unwise and unwarranted at this time. The Commission will, however, continue to evaluate the LUAP within the context of its pending Comprehensive Resource

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*During July 22, 2004 Collaborative Meeting*, Pages 6-8.

[24]The RSC is made up of the regulators of utility service from those states which have SPP members.

Planning rulemaking, and additionally explore other Large User programs that could be implemented within the context of the existing retail regulatory framework.

**Changes In Circumstance**

In viewing each party's opinion regarding how much change has occurred since the Commission last made recommendations regarding retail access to the General Assembly, we found that, while there have been some changes, most of the positive changes that are necessary to effect successful retail access are still in progress, and other changes (i.e., the dramatic increase in natural gas costs which largely drive wholesale market power prices, along with the reduced financial viability of many wholesale market participants) have made matters worse. We continue to lack sufficient independent transmission operation and robust wholesale markets throughout this region, and the current retail cost of electricity available from Arkansas utilities is even more attractive and valuable to Arkansans than it was before, in light of today's dramatically higher natural gas prices which fuel most of the plants that sell into the wholesale market.

With respect to the need for a fully-functioning wholesale market, the Commission continues to believe, along with most other electric industry regulators and market participants, that a vibrant and successful regional wholesale market, with many buyers and sellers, transparent pricing, market monitoring, and structures to respond to market signals such as "real-time" pricing, is a prerequisite for a successful retail access program, including one directed only to Large Users. Transmission availability and the cost of that availability will likely have a significant impact on the prices offered and resulting success of any competitive retail market in Arkansas. Currently, the SPP and its participants are pursuing an appropriate transmission planning and expansion process and are addressing related pricing issues under the RTO. The ultimate result, which will not be finalized for some time, will have a direct impact on the economics of any subsequent LUAP. Finally, access to a vital source of suppliers for any retail market will also be dependent, in large part, upon access to the same suppliers found in a functioning wholesale market. That type of wholesale market for Arkansas does not currently exist. Its existence will depend upon the successful formation and continued evolution of a well-designed RTO. The Commission believes that the economics of retail access will inevitably be dependent on the economics of an open and transparent transmission system and regional wholesale market, which, at this time, are in the development stage for the SPP-member utilities but are non-existent in the Entergy region.

The Commission also reports that Arkansas utilities' generation costs remain low and continue to be lower when compared to most other states. In addition, these regulated sales rates are even more competitive today than when Staff[25] prepared its previous cost-benefit study, since the predominantly gas-fired wholesale market sector is being affected by today's higher natural gas prices. Staff provided for Commission consideration the following table regarding 2002 electric costs for Arkansas, the U.S., and states surrounding Arkansas:[26]

[25]Staff reports in its *Staff Supplemental Post Collaborative Comments*, page 1, that "based on the economic analysis conducted by Staff in Docket No. 00-190-00, it is not likely that a LUAP would produce cost savings for the majority of large users."

**2002 Average Revenues per kWh for the U.S. and Surrounding States**

| State | Commercial | Industrial |
|---|---|---|
| U.S. Total | 7.86 | 4.88 |
| **Arkansas** | **5.68** | **4.01** |
| Missouri | 5.88 | 4.42 |
| Louisiana | 6.64 | 4.42 |
| Oklahoma | 5.75 | 3.81 |
| Mississippi | 6.83 | 4.40 |
| Tennessee | 6.45 | 4.15 |
| Kansas | 6.28 | 4.53 |

The AG also provided similar information showing Arkansas in comparison to all states, updating it through the first four months of 2004, which indicated a progressive improvement in Arkansas' position in relation to electric prices in other states, reflecting that by 2004 only four states in the nation had lower industrial electric rates than did Arkansas.[27] The Commission therefore reports that Arkansas' regulated electric utility rates have become even more competitive since its last report to the General Assembly, and the Commission considers it highly unlikely that the wholesale market could produce prices for full-requirements electricity service that are comparable to current regulated sales rates, much less more competitive. Correspondingly, it is doubtful that significant numbers of Large Users would be willing to take the economic price risk of depending on market sources to completely meet their electricity requirements at any time in the near future.

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[26]Energy Information Administration, Electric Power Annual 2002. Figures 7.6 and 7.7. pages 45-46 reported as footnote 2, *Staff Supplemental Post Collaborative Comments, Attachment 1*, page 7.

[27]*Post-Collaborative Comments of the Attorney General*, pages 1-2, and *Appendix A.*

## **Economics of a LUAP:**
## **Cost Studies**
## **and Customer Participation**

During the course of the collaborative, the Commission received opposing opinions as to the economics of pursuing a LUAP at this juncture. The AG, EAI, Swepco, OG&E, Empire, the Coops, AECC, and Staff, (based in part on cost studies previously provided), opined that it is **highly unlikely**, given the economics, that many customers will opt-in to take service under an LUAP. Conversely, Constellation, Calpine, Wal Mart, and Tractebel, (based in part on Tractebel's own cost study), opined that it is **highly likely**, given the economics, that many customers will opt to take service under a LUAP.

Those parties opposing immediate access caution that the costs of implementation, including stranded utility-owned generation costs, would not be offset against any generation cost savings produced by alternative suppliers selling into the wholesale market. They further caution that, as recent history has proven, creating a program will be a complicated, contested and costly process and, depending upon how it is ultimately designed, could increase costs significantly. These parties all caution that costs will not be easily measurable and, if they are significant, will render the program unattractive and ultimately a failure. Absent a clear economic incentive to do so, Large Users will not participate. And, also importantly, without program customers from which to recover program implementation costs, other ratepayers would have to pay those costs.

Those parties in favor of a LUAP argued that implementation need not be complex or complicated and that costs should not be significant. These parties argued that the Commission can easily benefit by its experience and work already done as a result of Act 1556 and from the programs already in place in other states. Additionally, should there be implementation costs, the savings expected will more than offset any incremental costs needed to effect the program. Tractebel offered for Commission consideration its cost study suggesting a savings of some $100 million per year. However, as noted previously, neither the Commission's Staff nor AECC regarded this study as accurate, due to its flawed assumptions and methodology.[28] Furthermore, even the supporting parties conceded that there is no guarantee of customer participation, absent more certainty about market prices, the design and cost of the program itself, and corresponding ability of Large Users to realize economic benefits.[29]

The Commission, having considered the positions of the parties, its previous experience with Act 1556, and its ongoing work as a member of the SPP RSC, expects any type of LUAP development to be a complex, time-consuming, and contested process. Just one example of the divergent positions of the parties to the collaborative, and one which carries significantly different cost consequences, is the recommended minimum demand level by which customers would be eligible to participate in the program. Those recommended load[30] levels range from as little as 250 kW to as high as 20,000 kW, or an 8,000% load difference to qualify. The following is a table which indicates how many actual customers would be eligible for the program under the various minimum loads recommended by the parties:

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[28] Reply Comments of Staff and AECC.

[29] Final Comments of Tractebel Energy Marketing, Inc., p. 7, AEEC, Transcript p. 11, and Final Comments of Arkansas Electric Energy Consumers, Inc. ("AEEC") in Response to Comments made during July 22, 2004 Collaborative Meeting, pp. 3, 8.

[30]Load, in this context, represents the highest hourly demand for power made by a customer.

| | Over 250 kW | Over 500 kW | Over 1,000 kW | Over 5,000 kW | Over 20,000 kW |
|---|---|---|---|---|---|
| | | | | | |
| Coops | 378 | 230 | 144 | 24 | 4 |
| Empire | 8 | 3 | 3 | 1 | 0 |
| EAI | 1358 | 620 | 271 | 46 | 5 |
| OG&E | 205 | 99 | 55 | 9 | 1 |
| Swepco | 330 | 164 | 82 | 16 | 2 |
| | | | | | |
| Total Eligible | 2279 | 1116 | 555 | 96 | 12 |

That represents a percentage swing of customers eligible for service of over 17,000% between qualifying at only 250 kW and qualifying at 20,000 kW. This is only one issue with which the Commission would have to contend. It is highly unlikely that the program development process would be either easy or inexpensive; to the contrary, it is more likely to be a very high-cost proposition, in terms of money, time and personnel resources for the utilities, the customer groups, the suppliers, and the Commission.

Additionally, depending on the eventual outcome of all the issues, implementation costs related to infrastructure could be significant as well. EAI reports that, conservatively assuming only a small number of participants (those with loads of 5,000 kW or greater), program costs would be between $12 to $16 million initially and $1 million annually thereafter.[31] Reducing qualifying load levels and increasing the number of participants will increase the costs significantly. As participants increase, manual systems used for a few participants must be replaced by much more expensive automated systems to handle the increased number of transactions. And, as the majority of the parties acknowledged, these costs are not easily or accurately estimated.

There is a significant risk that fixed costs could be shifted to other customers if large users leave utility service and pursue market options. For any program to meet the statutory requirement that costs not be shifted to other customers, program participants would be required to pay those costs as well as implementation costs. The Commission also notes the low-cost electricity that still prevails in Arkansas, as illustrated by Staff in its table and discussed by the AG in its comments. That low cost is predominantly due to the lower-cost fuels used to produce it (coal and uranium) and Arkansas' relative freedom from reliance on higher-cost natural gas for generation. Over the past few years, higher prices for natural gas have caused gas-fired generation to become less competitive. With gas fired generation being offered by the majority of possible alternative suppliers, it is highly unlikely that such energy supply, when coupled with the costs related to implementation of the program and recovery of stranded investments, will provide an economic choice for Large Users. This situation is not expected to change significantly in the future. Because of the considerable doubt that a LUAP would be economically viable, the Commission is unable to state that it would be in the public interest to move forward with program development at this time.

The Commission also gave due consideration to the contradictory results of the two cost studies used by the opposing parties as support for their positions. Clearly, it would be the potential cost-savings opportunities of any LUAP which would deem it successful, or else program development would simply be an exercise in time and consume precious resources. As

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[31]*Post Collaborative Comments of Entergy Arkansas, Inc*, page 6.

noted previously, serious concerns were raised regarding the structure and inputs of Tractebel's cost-benefit analysis, and those concerns were not rebutted.

Moreover, beyond the studies presented and arguments advanced by those on both sides of the issue, the Commission was alert to the comments and recommendations made by AEEC. AEEC represents a significant number of the potential participants in an LUAP. During the collaborative process AEEC remained reticent to commit its members to access. Rather, AEEC advised the Commission that it would need a more definitively designed program, with more definitively determined costs. AEEC made it clear that, absent clear economic incentives to do so, its members would not commit to participate in a LUAP. During the collaborative, AEEC's spokesman said in opening comments that "AEEC agrees...that the principal factor in determining whether a large user will participate in a large user access program is the potential for cost savings. Most...large users will not be amendable to paying more for electric service for the mere privilege of entering the competitive marketplace."[32] Later in the collaborative meeting, AEEC's spokesman also noted that "I think it's going to be difficult for any large customer to make a commitment today, not knowing what a defined plan would be. And...I...don't think the large industrial customers have any interest at all in transferring their wealth from one provider to another unless there are net economic benefits." [33]

AEEC proposed that the Commission move forward with designing a program, but to do so in the context of a demand reduction alternative to new utility generation construction or

[32](Transcript of Collaborative page 11)

[33](Transcript of Collaborative, page 94)

resource acquisition. AEEC recommended that no implementation of an LUAP take place at this time.

However, AEEC's reluctance to commit its members to a LUAP appears to go even farther than the need to have more definitive information about program design and costs. AEEC also appears to be reluctant to commit its members to rely on retail competition to supply their electricity needs, even after the program is in place and the costs are known. In a retail competition environment, customers that buy their electricity in the unregulated marketplace take the risk that market prices will be higher than those of the utility, along with the rewards whenever there are savings. AEEC, however, proposes that any access program design allow the Large User customers to return to utility service as a safety net, eliminating most of the risk side of the competitive equation. In view of this position, and to the extent any potential 'rewards' of a LUAP are marginal at best (given the current low-cost utility sales rates), the Commission finds it unlikely that any AEEC members would be inclined to subscribe at this time. SWEPCO and its parent AEP, Inc. experienced that same reluctance on the part of both suppliers and participants in several states in which they operate, with many of the programs now deemed failures. Since the Commission found no overwhelming clamor for LUAP service from eligible customers during the collaborative process, due in large measure to the real and perceived lack of cost-savings certainty, and there would be considerable shifting of fixed costs and increased costs with program implementation, the Commission reports that it would not be economically feasible to move forward with LUAP at this time.

## CONCLUSIONS

After conducting an extensive and inclusive collaborative process and considering all of the information discussed above, the Commission concludes that circumstances in the current electric generation market have not changed sufficiently since adoption of Act 204 to be able to structure a Large User Access Program that would produce economic benefits for Large Users while also ensuring no cost-shifting or net cost increases to remaining customers. This region continues to lack a comprehensive transmission architecture that would permit well-functioning and robust wholesale power markets, and the Arkansas utilities continue to have sufficient amounts of low-cost generation available for all its customers. Given these continued circumstances and the expected additional costs required to implement a LUAP, there are no clear economic benefits, and more likely economic harm, that would result from moving forward with the LUAP concept at this time. The Commission also concludes that, as an alternative to LUAP, there are several types of programs that utilities could offer within the context of the current regulated environment which will address some of the concerns and desires expressed by Larger Users, and accordingly the Commission encourages all jurisdictional electric utilities to explore them.[34] The Commission will also consider the alternative approach proposed by AEEC whereby it recommended that LUAP implementation be coordinated with a utility's future resource planning as an alternative to the construction or purchase of new generation. Furthermore, the Commission will continue to monitor circumstances in this state, as well as any parallel program developments in other states, and

[34]Some of these are Demand Side Management, Time of Use, Peak Shaving, Interruptible, and other Programs which can offer customers flexibility while reducing peak demand and producing savings for all customers classes.

subsequently recommend to the General Assembly any statutory modifications needed to allow appropriate retail competition programs in the future.

## **RECOMMENDATIONS**

Based on the foregoing, the Commission recommends that the General Assembly not pursue statutory changes to allow retail choice for Large Users at this time. The Commission will stay involved in the development of appropriate regional transmission and wholesale market improvements, monitor the electricity costs of Arkansas electric utilities, and monitor competitive program developments in other states. The Commission also suggests that interested parties should address the manner in which the LUAP concept can be incorporated in long-term utility resource planning within the context of the Commission's open Docket No.03-070-R, styled *Developing Comprehensive Resource Planning Guidelines For Electric Utilities*.